



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R06-OAR-2014-0205; FRL-9935-44-Region 6]**

**Approval and Promulgation of Implementation Plans; New Mexico; Infrastructure for the  
2010 Sulfur Dioxide National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from the State of New Mexico for the Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS). The submittal addresses how the existing SIP provides for implementation, maintenance, and enforcement of the 2010 SO<sub>2</sub> NAAQS (infrastructure SIP or i-SIP), including two of the four CAA requirements for interstate transport of SO<sub>2</sub> emissions. This i-SIP ensures that the State's SIP is adequate to meet the state's responsibilities under the Federal Clean Air Act (CAA).

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF**

**PUBLICATION THE FEDERAL REGISTER].**

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2014-0205. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Sherry Fuerst, (214) 665-6454, [fuerst.sherry@epa.gov](mailto:fuerst.sherry@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

**I. Background**

The background for this action is discussed in detail in our June 29, 2015 proposal (80 FR 36956). In that notice, we proposed to approve the New Mexico i-SIP submittal for the 2010 SO<sub>2</sub> NAAQS.

We received comments from one commenter on the proposal. Our response to the comments are below.

## II. Response to Comments

*Comment:* One commenter stated that EPA cannot approve the PSD portions of the i-SIP, ergo 110(a)(2)(C), (D)(i)(II)(PSD prong) and (J), until the PM<sub>2.5</sub> increments are fully approved into both the New Mexico and Albuquerque-Bernalillo County SIPs.

*Response:* EPA disagrees with the comment as our proposed action did not pertain to the Albuquerque-Bernalillo County portion of the SIP. The New Mexico Air Quality Control Act (section 74-2-4) authorizes Albuquerque/Bernalillo County to locally administer and enforce the State Air Quality Control Act by providing for a local air quality control program. Thus, State law views Albuquerque/ Bernalillo County and the remainder of the State of New Mexico as distinct air quality control entities. Therefore, each entity is required to submit its own SIP revision in order to completely satisfy the requirements of the Clean Air Act for the entire State of New Mexico. The Albuquerque/Bernalillo County Air Quality Control Board has the authority to implement a comprehensive Prevention of Significant Deterioration (PSD) permit program, separate and independent from the NM Air Quality Board. At the time of the instant proposal and comment, EPA had not yet approved any revision to the Albuquerque/Bernalillo County portion of the New Mexico PSD SIP.

EPA published its approval of revisions to the New Mexico SIP for Albuquerque/Bernalillo County that address the requirements of the EPA's May 2008, July 2010, and October 2012 PM<sub>2.5</sub> PSD Implementation Rules, and also incorporate revisions consistent with EPA's March 2011 Fugitives Interim Rule, July 2011 Greenhouse Gas (GHG) Biomass Deferral Rule, and July 2012 GHG Tailoring Rule Step 3 and GHG PALs Rule (see docket EPA-R06-OAR-2013-0616 in [www.regulations.gov](http://www.regulations.gov)). The comment is not relevant to the instant New Mexico SIP action, but EPA's approval of the Albuquerque/Bernalillo County PSD SIP revisions

renders the comment moot.

### **III. Final Action**

EPA is approving the February 14, 2014, infrastructure SIP submission from New Mexico, which addresses the requirements of CAA sections 110(a)(1) and (2) as applicable to the 2010 SO<sub>2</sub> NAAQS, including two of the four CAA requirements for interstate transport of SO<sub>2</sub> emissions. The two interstate transport requirements being addressed pertain to prohibiting SO<sub>2</sub> emissions that will interfere with measures required to be included in the SIP for any other State to prevent significant deterioration of air quality or to protect visibility (CAA 110(a)(2)(D)(i)(II)). Specifically, EPA is approving the i-SIP as meeting the following CAA infrastructure elements: 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is not taking action on section 110(a)(2)(D)(i)(I) – pertaining to prohibiting emissions which will contribute significantly to nonattainment or interfere with maintenance of the NAAQS at this time. EPA is not taking action pertaining to section 110(a)(2)(I) - Nonattainment Area Plan or Plan Revisions under Part D as EPA believes this need not be addressed in the i-SIP. Based upon review of the state's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in these submissions or referenced in New Mexico's SIP, EPA believes that New Mexico has the infrastructure in place to address all applicable required elements of sections 110(a)(1) and (2) (except as otherwise noted) to ensure that the 2010 SO<sub>2</sub> NAAQS are implemented in the state.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies

with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements

would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: September 29, 2015.

**Ron Curry,**  
*Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart GG – New Mexico**

2. In §52.1620, the second table in paragraph (e) is amended by adding the entry “Infrastructure for the 2010 SO<sub>2</sub> NAAQS” at the end of the table to read as follows:

**§52.1620 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW**

**MEXICO SIP**

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * * * *				
Infrastructure for the 2010 SO <sub>2</sub> NAAQS	Statewide, except for Bernalillo County and Indian country	2/14/2014	<b>[insert date of publication in the Federal Register] [insert Federal Register citation]</b>	Does not address CAA 110(a)(2)(D)(i)(I)

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